

AMENDED IN SENATE JUNE 15, 2006

AMENDED IN ASSEMBLY APRIL 17, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2728

Introduced by Assembly Member Klehs

February 24, 2006

An act to amend ~~Section 12071~~ of Sections 12001 and 12276.5 of, and to add Section 12282 to, the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

AB 2728, as amended, Klehs. Firearms.

Existing law establishes a list of certain firearms by make and model as assault weapons and otherwise describes or defines certain firearms as firearms.

This bill would provide that the term "assault weapon" for those purposes includes the frame or receiver of the weapon.

Existing law provides a judicial procedure for declaring a firearm an assault weapon, as specified.

This bill would repeal those provisions.

Existing law authorizes the Attorney General to declare a firearm an assault weapon.

This bill would provide that authorization ends January 1, 2007.

Existing law generally regulates the possession of assault weapons and .50 BMG rifles.

This bill would provide that possession of any assault weapon or of any .50 BMG rifle in violation of specified provisions of law would be a public nuisance. The bill would authorize the Attorney General, any district attorney, or any city attorney to bring an action in superior

court to enjoin the possession of the assault weapon or .50 BMG rifle. The bill would further provide that any assault weapon or .50 BMG rifle possessed in violation of specified provisions of law would, subject to exception, be destroyed, as specified. The bill would also provide that upon conviction of any misdemeanor or felony involving an assault weapon, the assault weapon would be deemed a nuisance and disposed of as specified.

~~Existing law establishes a centralized list of firearms dealers licensed to sell firearms in the state, and maintained by the Department of Justice. Existing law provides that the department may, among other reasons, remove from this list any person who knowingly or with gross negligence violates specified provisions of law regulating firearms dealers.~~

~~This bill would provide that the Department of Justice or local agency responsible for inspections of firearms dealers may, at their discretion, verify dealer compliance with existing law by completing a compliance inspection of the business premises within 30 days of receipt of a centralized list application form submitted in accordance with regulations established by the department. The bill would also provide that any applicant who fails to meet applicable requirements would be granted at least 30 days from notice of inspection findings to make corrections as necessary and be given a subsequent inspection to provide evidence of compliance. This bill would also provide that the department may immediately seek an interim suspension order, as specified, or temporarily remove from this list any person who knowingly or with gross negligence violates specified provisions of law regulating firearms dealers in a manner that places public health and safety in imminent danger. The bill would also provide that lesser violations would be subject to notices for corrective action, fines, and that removal from the centralized list would be in accordance with the Administrative Procedures Act, as specified.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12001 of the Penal Code is amended to
2 read:

3 12001. (a) (1) As used in this title, the terms “pistol,”
4 “revolver,” and “firearm capable of being concealed upon the

1 person” shall apply to and include any device designed to be used
2 as a weapon, from which is expelled a projectile by the force of
3 any explosion, or other form of combustion, and that has a barrel
4 less than 16 inches in length. These terms also include any device
5 that has a barrel 16 inches or more in length which is designed to
6 be interchanged with a barrel less than 16 inches in length.

7 (2) As used in this title, the term “handgun” means any
8 “pistol,” “revolver,” or “firearm capable of being concealed upon
9 the person.”

10 (b) As used in this title, “firearm” means any device, designed
11 to be used as a weapon, from which is expelled through a barrel a
12 projectile by the force of any explosion or other form of
13 combustion.

14 (c) As used in Sections 12021, 12021.1, 12070, 12071, 12072,
15 12073, 12078, 12101, and 12801 of this code, and Sections 8100,
16 8101, and 8103 of the Welfare and Institutions Code, the term
17 “firearm” includes the frame or receiver of the weapon.

18 (d) For the purposes of Sections 12025 and 12031, the term
19 “firearm” also shall include any rocket, rocket propelled
20 projectile launcher, or similar device containing any explosive or
21 incendiary material whether or not the device is designed for
22 emergency or distress signaling purposes.

23 (e) For purposes of Sections 12070, 12071, and paragraph (8)
24 of subdivision (a), and subdivisions (b), (c), (d), and (f) of
25 Section 12072, the term “firearm” does not include an unloaded
26 firearm that is defined as an “antique firearm” in Section
27 921(a)(16) of Title 18 of the United States Code.

28 (f) Nothing shall prevent a device defined as a “handgun,”
29 “pistol,” “revolver,” or “firearm capable of being concealed upon
30 the person” from also being found to be a short-barreled shotgun
31 or a short-barreled rifle, as defined in Section 12020.

32 (g) For purposes of Sections 12551 and 12552, the term “BB
33 device” means any instrument that expels a projectile, such as a
34 BB or a pellet, not exceeding 6mm caliber, through the force of
35 air pressure, gas pressure, or spring action, or any spot marker
36 gun.

37 (h) As used in this title, “wholesaler” means any person who is
38 licensed as a dealer pursuant to Chapter 44 (commencing with
39 Section 921) of Title 18 of the United States Code and the
40 regulations issued pursuant thereto who sells, transfers, or

1 assigns firearms, or parts of firearms, to persons who are licensed
2 as manufacturers, importers, or gunsmiths pursuant to Chapter 44
3 (commencing with Section 921) of Title 18 of the United States
4 Code, or persons licensed pursuant to Section 12071, and
5 includes persons who receive finished parts of firearms and
6 assemble them into completed or partially completed firearms in
7 furtherance of that purpose.

8 “Wholesaler” shall not include a manufacturer, importer, or
9 gunsmith who is licensed to engage in those activities pursuant to
10 Chapter 44 (commencing with Section 921) of Title 18 of the
11 United States Code or a person licensed pursuant to Section
12 12071 and the regulations issued pursuant thereto. A wholesaler
13 also does not include those persons dealing exclusively in grips,
14 stocks, and other parts of firearms that are not frames or receivers
15 thereof.

16 (i) As used in Section 12071 or 12072, “application to
17 purchase” means any of the following:

18 (1) The initial completion of the register by the purchaser,
19 transferee, or person being loaned the firearm as required by
20 subdivision (b) of Section 12076.

21 (2) The initial completion and transmission to the department
22 of the record of electronic or telephonic transfer by the dealer on
23 the purchaser, transferee, or person being loaned the firearm as
24 required by subdivision (c) of Section 12076.

25 (j) For purposes of Section 12023, a firearm shall be deemed
26 to be “loaded” whenever both the firearm and the unexpended
27 ammunition capable of being discharged from the firearm are in
28 the immediate possession of the same person.

29 (k) For purposes of Sections 12021, 12021.1, 12025, 12070,
30 12072, 12073, 12078, 12101, and 12801 of this code, and
31 Sections 8100, 8101, and 8103 of the Welfare and Institutions
32 Code, notwithstanding the fact that the term “any firearm” may
33 be used in those sections, each firearm or the frame or receiver of
34 the same shall constitute a distinct and separate offense under
35 those sections.

36 (l) For purposes of Section 12020, a violation of that section as
37 to each firearm, weapon, or device enumerated therein shall
38 constitute a distinct and separate offense.

39 (m) Each application that requires any firearms eligibility
40 determination involving the issuance of any license, permit, or

1 certificate pursuant to this title shall include two copies of the
2 applicant's fingerprints on forms prescribed by the Department
3 of Justice. One copy of the fingerprints may be submitted to the
4 United States Federal Bureau of Investigation.

5 (n) As used in this chapter, a "personal handgun importer"
6 means an individual who meets all of the following criteria:

7 (1) He or she is not a person licensed pursuant to Section
8 12071.

9 (2) He or she is not a licensed manufacturer of firearms
10 pursuant to Chapter 44 (commencing with Section 921) of Title
11 18 of the United States Code.

12 (3) He or she is not a licensed importer of firearms pursuant to
13 Chapter 44 (commencing with Section 921) of Title 18 of the
14 United States Code and the regulations issued pursuant thereto.

15 (4) He or she is the owner of a ~~pistol, revolver, or other~~
16 ~~firearm capable of being concealed upon the person~~ *handgun*.

17 (5) He or she acquired that ~~pistol, revolver, or other firearm~~
18 ~~capable of being concealed upon the person~~ *handgun* outside of
19 California.

20 (6) He or she moves into this state on or after January 1, 1998,
21 as a resident of this state.

22 (7) He or she intends to possess that ~~pistol, revolver, or other~~
23 ~~firearm capable of being concealed upon the person~~ *handgun*
24 within this state on or after January 1, 1998.

25 (8) The ~~pistol, revolver, or other firearm capable of being~~
26 ~~concealed upon the person~~ *handgun* was not delivered to him or
27 her by a person licensed pursuant to Section 12071 who
28 delivered that firearm following the procedures set forth in
29 Section ~~12071.2~~ 12071 and subdivision (c) of Section 12072.

30 (9) He or she, while a resident of this state, had not previously
31 reported his or her ownership of that ~~pistol, revolver, or other~~
32 ~~firearm capable of being concealed upon the person~~ *handgun* to
33 the Department of Justice in a manner prescribed by the
34 department that included information concerning him or her and
35 a description of the firearm.

36 (10) The ~~pistol, revolver, or other firearm capable of being~~
37 ~~concealed upon the person~~ *handgun* is not a firearm that is
38 prohibited by subdivision (a) of Section 12020.

1 ~~(11) The pistol, revolver, or other firearm capable of being~~
2 ~~concealed upon the person handgun~~ is not an assault weapon, as
3 defined in Section 12276 or 12276.1.

4 ~~(12) The pistol, revolver, or other firearm capable of being~~
5 ~~concealed upon the person handgun~~ is not a machinegun, as
6 defined in Section 12200.

7 (13) The person is 18 years of age or older.

8 (o) For purposes of paragraph (6) of subdivision (n):

9 (1) Except as provided in paragraph (2), residency shall be
10 determined in the same manner as is the case for establishing
11 residency pursuant to Section 12505 of the Vehicle Code.

12 (2) In the case of members of the Armed Forces of the United
13 States, residency shall be deemed to be established when he or
14 she was discharged from active service in this state.

15 (p) As used in this code, “basic firearms safety certificate”
16 means a certificate issued by the Department of Justice pursuant
17 to Article 8 (commencing with Section 12800) of Chapter 6 of
18 Title 2 of Part 4, prior to January 1, 2003.

19 (q) As used in this code, “handgun safety certificate” means a
20 certificate issued by the Department of Justice pursuant to Article
21 8 (commencing with Section 12800) of Chapter 6 of Title 2 of
22 Part 4, as that article is operative on or after January 1, 2003.

23 (r) As used in this title, “gunsmith” means any person who is
24 licensed as a dealer pursuant to Chapter 44 (commencing with
25 Section 921) of Title 18 of the United States Code and the
26 regulations issued pursuant thereto, who is engaged primarily in
27 the business of repairing firearms, or making or fitting special
28 barrels, stocks, or trigger mechanisms to firearms, or the agent or
29 employee of that person.

30 (s) *For purposes of Section 12276 the term “assault weapon”*
31 *includes the frame or receiver of the weapon.*

32 SEC. 2. *Section 12276.5 of the Penal Code is amended to*
33 *read:*

34 12276.5. ~~(a) Upon request by the Attorney General filed in a~~
35 ~~verified petition in a superior court of a county with a population~~
36 ~~of more than 1,000,000, the superior court shall issue a~~
37 ~~declaration of temporary suspension of the manufacture, sale,~~
38 ~~distribution, transportation, or importation into the state, or the~~
39 ~~giving or lending of a firearm alleged to be an assault weapon~~

1 within the meaning of Section 12276 because the firearm is
2 either of the following:

3 (1) Another model by the same manufacturer or a copy by
4 another manufacturer of an assault weapon listed in subdivision
5 (a), (b), or (c) of Section 12276 which is identical to one of the
6 assault weapons listed in those subdivisions except for slight
7 modifications or enhancements including, but not limited to: a
8 folding or retractable stock; adjustable sight; case deflector for
9 left-handed shooters; shorter barrel; wooden, plastic or metal
10 stock; larger magazine size; different caliber provided that the
11 caliber exceeds .22 rimfire; or bayonet mount. The court shall
12 strictly construe this paragraph so that a firearm which is merely
13 similar in appearance but not a prototype or copy cannot be
14 found to be within the meaning of this paragraph.

15 (2) A firearm first manufactured or sold to the general public
16 in California after June 1, 1989, which has been redesigned,
17 renamed, or renumbered from one of the firearms listed in
18 subdivision (a), (b), or (c) of Section 12276, or which is
19 manufactured or sold by another company under a licensing
20 agreement to manufacture or sell one of the firearms listed in
21 subdivision (a), (b), or (c) of Section 12276, regardless of the
22 company of production or distribution, or the country of origin.

23 (b) Upon the issuance of a declaration of temporary
24 suspension by the superior court and after the Attorney General
25 has completed the notice requirements of subdivisions (c) and
26 (d), the provisions of subdivision (a) of Section 12280 shall apply
27 with respect to those weapons.

28 (c) Upon declaration of temporary suspension, the Attorney
29 General shall immediately notify all police, sheriffs, district
30 attorneys, and those requesting notice pursuant to subdivision
31 (d), shall notify industry and association publications for those
32 who manufacture, sell, or use firearms, and shall publish notice
33 in not less than 10 newspapers of general circulation in
34 geographically diverse sections of the state of the fact that the
35 declaration has been issued.

36 (d) The Attorney General shall maintain a list of any persons
37 who request to receive notice of any declaration of temporary
38 suspension and shall furnish notice under subdivision (c) to all
39 these persons immediately upon a superior court declaration.
40 Notice shall also be furnished by the Attorney General by

1 certified mail, return receipt requested (or substantial equivalent
2 if the person who is to receive the notice resides outside the
3 United States), to any known manufacturer and California
4 distributor of the weapon which is the subject of the temporary
5 suspension order or their California statutory agent for service.
6 The notice shall be deemed effective upon mailing.

7 (e) ~~After issuing a declaration of temporary suspension under~~
8 ~~this section, the superior court shall set a date for hearing on a~~
9 ~~permanent declaration that the weapon is an assault weapon. The~~
10 ~~hearing shall be set no later than 30 days from the date of~~
11 ~~issuance of the declaration of temporary suspension. The hearing~~
12 ~~may be continued for good cause thereafter. Any manufacturer or~~
13 ~~California distributor of the weapon which is the subject of the~~
14 ~~temporary suspension order has the right, within 20 days of~~
15 ~~notification of the issuance of the order, to intervene in the~~
16 ~~action. Any manufacturer or California distributor who fails to~~
17 ~~timely exercise its right of intervention, or any other person who~~
18 ~~manufactures, sells, or owns the assault weapon may, in the~~
19 ~~court's discretion, thereafter join the action as amicus curiae.~~

20 (f) ~~At the hearing, the burden of proof is upon the Attorney~~
21 ~~General to show by a preponderance of evidence that the weapon~~
22 ~~which is the subject of the declaration of temporary suspension is~~
23 ~~an assault weapon. If the court finds the weapon to be an assault~~
24 ~~weapon, it shall issue a declaration that it is an assault weapon~~
25 ~~under Section 12276. Any party to the matter may appeal the~~
26 ~~court's decision. A declaration that the weapon is an assault~~
27 ~~weapon shall remain in effect during the pendency of the appeal~~
28 ~~unless ordered otherwise by the appellate court.~~

29 (g)

30 (a) (1) The Attorney General shall prepare a description for
31 identification purposes, including a picture or diagram, of each
32 assault weapon listed in Section 12276, and any firearm declared
33 to be an assault weapon pursuant to this section, and shall
34 distribute the description to all law enforcement agencies
35 responsible for enforcement of this chapter. Those law
36 enforcement agencies shall make the description available to all
37 agency personnel.

38 (h) ~~The~~

39 (2) *For purposes of this section, the term "assault weapon"*
40 *includes the frame or receiver of the weapon.*

(b) (1) *Until January 1, 2007, the Attorney General shall promulgate a list that specifies all firearms designated as assault weapons in Section 12276 or declared to be assault weapons pursuant to this section. The Attorney General shall file that list with the Secretary of State for publication in the California Code of Regulations. Any declaration that a specified firearm is an assault weapon shall be implemented by the Attorney General who, within 90 days, shall promulgate an amended list which shall include the specified firearm declared to be an assault weapon. The Attorney General shall file the amended list with the Secretary of State for publication in the California Code of Regulations. Any firearm declared to be an assault weapon prior to January 1, 2007, shall remain on the list filed with the Secretary of State.*

(2) Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code, pertaining to the adoption of rules and regulations, shall not apply to any list of assault weapons promulgated pursuant to this section.

(i)

(c) The Attorney General shall adopt those rules and regulations that may be necessary or proper to carry out the purposes and intent of this chapter.

SEC. 3. *Section 12282 is added to the Penal Code, to read:*

12282. (a) *Possession of any assault weapon, as defined in Section 12276, 12276.1 or 12276.5, or of any .50 BMG rifle, in violation of this chapter is a public nuisance. The Attorney General, any district attorney, or any city attorney may bring an action in superior court to enjoin the possession of the assault weapon or .50 BMG rifle. Any assault weapon or .50 BMG rifle possessed in violation of, or otherwise in violation of this chapter shall be destroyed in a manner so that it may no longer be used, except upon the filing of a certificate of a judge of a court of record, or the district attorney, or the Department of Justice stating that the preservation of the assault weapon or .50 BMG rifle is necessary to serve the ends of justice.*

(b) *Upon conviction of any misdemeanor or felony involving an assault weapon, the assault weapon shall be deemed a nuisance and disposed of pursuant to subdivision (d) of Section 12028.*

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**All matter omitted in this version of the bill
appears in the bill as amended in
Assembly, April 17, 2006 (JR11)**

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